

1894-040 Chancery Causes: Hannah T. Harber vs. Milton B. Fleenor
Lee Co.

Thompson, Patrick

CA-Contract Dispute
T-Property
Woman

-Deed

1 To the Honorable H. S. K. Morrison
2 Judge of the Circuit Court for
3 Lee County, Virginia:

4 Humbly complaining, sheweth
5 to your honor, your Oratrix, Han-
6 nah J. Barber. That Anna Thompson,
7 Sarah Thompson, and your oratrix,
8 were before and during the year
9 1878, seized and possessed, in fee
10 simple, of a certain tract of land
11 lying on the Sugar Run road about
12 one half mile from the Camp Ground
13 in Lee County, Virginia, and which
14 said tract of land they inherited as
15 heirs at law from Henry Thompson
16 Sr deceased, and Henry Thompson
17 Jr deceased; that said tract of
18 land was owned jointly by them,
19 partition having never been made
20 between them, and that upon said
21 tract of land was situated a dwell-
22 ing house in which they all resid-
23 ed.

24 Your Oratrix will further show
25 your honor that the said Anna
26 Thompson, Sarah Thompson
27 and herself, on the 15th day of
28 April 1878, conveyed by deed
29 said tract of land to one
30 Milton B. Fleener, for the con-
31 sideration that he had lived
32 with and worked for them, and

1 would continue to live with ~~and~~
2 take care of them during their
3 natural lives; that in said
4 deed they reserved the right
5 to the possession and control
6 of their interests conveyed during
7 their natural lives, and held
8 said land bonded for their
9 support, ^{and maintenance} so long as they might
10 live, and reserved and retained
11 a lien on said land for that
12 purpose. A copy of said deed
13 is herewith filed, marked "A",
14 and prayed to be considered
15 as part of this bill.

16 Your Oratory will further show
17 your honor that the said Anna
18 Thompson and Sarah Thompson
19 are now both dead, and have
20 been for several years; that up
21 to the time of their death, they all
22 three lived together in said
23 dwelling house situated on
24 said tract of land; that said
25 Milton B. Filmer lived with them
26 in said house up to the time of
27 their death, except at one time
28 he moved away therefrom
29 and remained away for some
30 thing, ^{little} two years, but returned
31 and lived with them as stated
32 up to their death; that after their

death, the said Milton B. Flemer
lived in said house with your oratrix,
and cared for and maintained her in
the manner that will be hereinafter
stated, up to the 28th day of April
1893; that on the said 28th day of
April 1893, the said Milton B. Flemer
moved away from said house,
and off of said tract of land,
and abandoned your said or-
trix and left her alone in said
house to take care of herself, and
moved to the town of Remington Gap
Lee County Virginia, where he has
since resided; that since the 28th
day of April 1893, up to the present
time he has failed and refused
to care for, support or maintain
your oratrix as was his duty and
obligation to do under said
deed, and that during said time
she has lived upon the charities
of her friends.

Your oratrix will further show your
honor that she is now seventy
five years old, and being a
woman at such an age is unable
to make a living by work;
and that all she now has to look
to for a support and maintenance
is her interest and rights in
said tract of land, and one

1 horse now being used by the
2 said Milton B. Flemer;

3 Your oratrix will ~~there~~ show your
4 honor that she at one time since
5 the date of said deed had paid
6 to her as her interest in the estate
7 of Charles Daugherty deceased, the
8 sum of \$530⁰⁰, and that the said
9 Milton B. Flemer borrowed a good
10 portion of said money and has
11 never accounted to her for the same,
12 that he has sold and unaccounted
13 for several head of her cattle,
14 and that he is now in the posses-
15 sion of her horse worth about
16 one hundred dollars, and refuses
17 to deliver the same to her; that
18 instead of ^{him} supporting and main-
19 taining her, ~~her means~~ has thus
20 been ~~exhausted~~ by him for
21 his own use and paying the
22 taxes on and keeping up said
23 tract of land, and that the only
24 thing he has done since he left was
25 to furnish a very scanty amount
26 of provisions when he expected to come
27 and board with her, or had hands
28 boarding there.

29 The premises considered, your
30 oratrix is advised, that the said
31 Milton B. Flemer's right to ~~the interest~~
32 of your oratrix in said tract of

land is dependent upon the con-
dition ~~proposed~~, that he would
continue to live with and take
care of, support and maintain
her upon said premises, and
that having thus abandoned her,
~~that~~ he has forfeited his right & her
interest in said land, and that a
Court of Equity will declare said
deed as to her interest in said
tract of land void, and of no effect,
and will partition said tract
of land between her and the said
Fleming, and lay off assign her
interest therein to her, and ~~charge~~
^{account} and stated between them of the
rents and profits of said land
and the dealings between them.
But if your oratrix is mistaken
as to her rights as above stated,
she is advised that by the terms
of said deed, she would have
a right to charge her interest
in said land with her support
and maintenance, and for
this purpose have enforced
on her interest the lien retained
in said deed, and the same
sold, and provision made
for out of the proceeds of the
same.

The object, therefore, of this bill

1 is to have set aside, and declared
2 null and void, said deed as
3 to the interest of your oratrix in
4 said tract of land, and to have
5 said tract of land partitioned,
6 and her share therein laid off
7 and assigned to her, or else
8 have said land charged with
9 her support and maintenance
10 and said lien enforced, and
11 said land sold and out of
12 the proceeds provide for her maintenance,
13 and support, and to have
14 an account taken to ascertain
15 the rents and profits of said
16 land and the rights therein of each
17 of said parties, and the liabilities
18 of each for the dealings between
19 them for property and borrowed
20 money.

21 The prayer, therefore, of your
22 oratrix is, that the said Milton
23 B. Tlenor be made a party
24 dependant to this bill, and be
25 required to answer the same on
26 oath as fully and particularly
27 as if he was specially interrogated,
28 that said deed as to the interest of
29 your oratrix in said land be set
30 aside and ~~cancelled~~ ^{annulled} for naught, and said
31 tract of land be partitioned and her
32 share therein laid off and assigned

1 to her, and that the same may include
2 the dwelling house wherein to reside,
3 or that said land be charged
4 with her support and maintenance,
5 and for this purpose said
6 law be enforced and said
7 land sold and out of the
8 proceeds she be provided for,
9 and that a commissioner be
10 appointed to ~~take~~ an account
11 and ascertain the rents and
12 profits of said lands, and the
13 interests of each ascertained, and
14 to account for the property
15 and money borrowed and
16 used one from the other.
17 And that such other and fur
18 ther relief may be granted your
19 oratrix as is adapted to the nature
20 of her case and agreeable to
21 equity and good conscience.
22 And may summons issue
23 against the said defendant.
24 And your oratrix will ever
25 pray etc.

26 B. H. Sewell,
27 p. 91

1st Feb'y 1894
Hanus & Harber

vs Bill-Chey

Milton B. Fleuor

1894 1st Feb'y Rules Bill filed Sumo
Executed and Decree nisi

" 2^d Feb'y Rules D. nisi

" Conf'd and Cause set

" for hearing by Juff

" March Term ^{Decree} Coult

" June Term Decree final

Plffs Costs

C 6.47

S 1.90

Atty 30.00

Wits 2.50

39.87

1 To the Honorable H. S. R. Merriam Judge of the
2 Lee County circuit court.

3 The answer of Milton B. Flumer
4 to a bill of complaint filed in this
5 honorable court against him by ~~and~~
6 Hannah J. Horner. For answer says
7 that it is true as alleged in said bill of
8 complaint that a deed was made by
9 the complainant together with Anna and
10 Sarah Thompson conveying the lands therein
11 mentioned and the deed filed by complaint
12 as exhibit "A." is a correct copy and sets
13 forth the true contract: but it is not
14 true that your respondent moved away
15 from the place and remained away
16 for two years, nor is it true that he has
17 ever borrowed money from complainant
18 and refused to pay her any thing at all
19 nor does he owe her any sum whatever
20 nor has he any house in his possession now
21 or at the institution of this suit belonging to
22 him, and he denies that he ever refused
23 or neglected to support or maintain her
24 at any time whatever: but to the contrary
25 has ever been ready willing and anxious to
26 to give her all the comforts in his power.

27 Your respondent will here give a short history
28 of the dealings between himself and the complainant:
29 The grantors in the said deed were the great
30 aunts of respondent and they reared him from
31 his infancy, neither of them ever married and
32 so your respondent agreed with them that

1 after he had gained his majority to support them
2 as shown in said deed, they being anxious to
3 secure to him their interest in said land,
4 He continued to live with them up to the time
5 he was married when he moved into another
6 house on the same land where he lived
7 less than a year, this was agreeable with
8 the grantors especially the complainant as it
9 was more upon her account than on anything else
10 that caused him to move, in less than a year respondent
11 again moved back into the mansion house
12 this occurred about 14 or 15 years ago. Then
13 respondent greatly improved the place erecting
14 a costly mansion house the same complainant
15 lived in and other buildings &c. These matters
16 continued pleasantly and agreeably enough
17 and about April 1893 respondent
18 being a minister in charge of the Pennington
19 Socy Circuit and wishing to give his children
20 the advantage of a school at that place, complainant
21 agreed that he could move to Pennington Socy
22 and she agreed to remain on the place;
23 respondent secured the services of one
24 Henry Patrick to take charge of the place and
25 come for complainant, he respondent furnished
26 vegetables, milk butter coffee and in fact nearly
27 every thing they consumed. Some time in December
28 1893 respondent notified said Patrick that he wanted
29 possession the 1st of January then next following,
30 at which time his contract with him expired, this
31 demand was the explosion that disrupted all
32 the past friendly acts and kindness between the

1 Justice, Patrick refusing to give possession claiming
2 that he had a written agreement with Complainer
3 for the land. Your respondent afterward had to
4 resort to law and ousted him by a writ.
5 and took possession of his property ^{at the same time} offering
6 to comply with his agreement with Complainer
7 but she refused to stay with him and left
8 with said Patrick. Complainer is a very old
9 and decrepit woman above seventy five
10 years of age and exceedingly childlike and
11 easily persuaded. Respondent here avers
12 that he never denied her any request or
13 act of kindness in all of his life except at one
14 time to keep a cow which he thought under the
15 circumstances he was justified in so doing.

16 Not only because of his agreement under
17 the deed but as a duty to his old aunt
18 your respondent has always been willing and
19 now offers to take her back and nurse her
20 and maintain her in comfort the balance
21 of her days which at best can be but few
22 He feels that she has been dissuaded from
23 her duty and her affections alienated by
24 the wily efforts of designing persons for
25 their own selfish purpose, and now having
26 assumed so much of said bill as he is
27 advised is rational or necessary he prays to be
28 hence dismissed with his reasonable costs so
29 justly expended in this behalf ~

30 J. R. Jackson of Blankenship
31 Atty for Deflt.
32

Virginia, Lee County, to wit.

1 I A. B. Munsey Clerk of the Circuit Court in and
2 for the County and State aforesaid, do certify that Mr.
3 B. Fleenor this day personally appeared before me in
4 my office, and made oath that the facts stated in the
5 foregoing answer, so far as they depend upon his
6 own knowledge are true, and so far as they depend
7 upon information derived from others he believes
8 them to be true. Given under my hand. Mar 7th 1894.
9 A B Munsey Clerk
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M. B. Fleenor
vs 3 Ann

~~Answer to Plaintiff~~

in open Court
Filed March the 7th 1894
A B Munsey

1 Hannah J. Harber Plff.
2 vs
3 Milton B. Flemon Defl. } In Chancery

4 This cause came on this
5 day to be again heard upon
6 the papers formerly read in
7 the cause, and the report of
8 A. M. Goins Special Commissioner
9 filed therein on the 26th day of
10 April 1894, and the compromise
11 agreement signed by Hannah J.
12 Harber and M. B. Flemon,
13 and filed with said report
14 as exhibit "I", and was argued
15 by Counsel. And there being
16 no exceptions to said report,
17 or to the said agreement filed
18 therewith, said report and
19 said agreement are each
20 approved and confirmed.

21 And it is further adjudged ordered
22 and decreed, that the said
23 plaintiff pursuant to the
24 terms of the said agreement
25 recover of the said defendant
26 fifty-dollars each year during
27 the natural life of the said plaintiff
28 to be paid as provided in the said
29 agreement, and the same to constitute
30 a lien upon the land in the bill and
31 proceedings mentioned, and it is
32 further adjudged ordered and

1 decreed that the said plaintiff
2 recover of the said defendant
3 her costs in this behalf expended,
4 including an attorney's fee
5 of thirty-dollars, for which
6 said said costs execution
7 may issue, And there remain-
8 ing nothing further to be
9 done. This cause is struck
10 out from the docket.

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Kamiah J. Kooner

as Decree final

William B. Flann.

Enborn Chap. Clerk Book B 45

Enter this

W. J. M.
June 16th 1894

1 Hannah Y. Harber Peff,
2 vs } Lu chey,
3 Milton B. Flemer Dft

This cause came on this day to be heard upon the bill of the plaintiff and exhibits therewith, and the answer of the said Milton B. Flemer, with general replication thereto, and was argued by counsel, On Consideration whereof, and it appearing to the Court proper, it is adjudged, ordered and decreed that A. M. Gaines ^{be and he} is hereby appointed a commissioner, whose duty it is to ascertain and report whether or not the said defendant since the execution of said deed has lived with, supported and maintained said plaintiff on the said premises, whether or not he abandoned ~~her~~ and left her, and went away from said premises, how or by whom she was supported and maintained during the time of such a abandonment, how much money he received or borrowed from her and whether the same was used for her benefit or support, and how much he still owes her, ^{if any} and whether or not he has the plaintiffs horse, where he got it, and how he should account for the same, ^{if at all} whether or not said land should

1 be partitioned between said
2 parties, and the share of the plain
3 tiff laid off and assigned to her,
4 and to take and state an account
5 of the rents and profits of said
6 land, and the share of each therein
7 and report any matter deemed
8 pertinent by said commissioners
9 or required by said parties.
10 He will report his action to the
11 next term of this court
12 and the cause is continued.

Hannah J. Horner.

Deane,

William B. Horner,

Ex. D. P. Page 601

March 16th 1894

Enter this.
H. J. Horner

March 16th 1894.

Hannah T. Harber

vs.

Milton B. Fleenor

} In Chy.

The depositions of Monta Fleenor,
H. W. Patrick, S. E. Turner, C. B. Fleenor,
and others, taken in my
office, before me A. M. Jones,
on the 23 and 24 days of Apr. 1894,
Special Commr., to be read as
evidence in the determining
of the questions referred to me
as Commr. in said case.

Present, Duncan & Sewell for
plff.

"

Jackson & Blankenship
for deft.

Monta Fleenor, a witness of lawful
age being first duly sworn, de-
poses and says:

Ques 1.

Please state whether or not
the defendant Milton B. Fleenor
on or about the 28th day of April
1893, moved away from the
house and land mentioned in ex-
hibit "A", and left the plaintiff,

Ans. He did move away some
time last Spring from said
house and land, and
left said Hannah T. Harber

(Witness
claims
50 cts)

alone.

Ques 2, ~~Where~~ Where did he move to, and how long did he remain away?

Ans. He moved to Pennington Gap, Lee County, Va., and he stayed about 10 mos. I suppose.

Ques 3, When did the plaintiff Haystack G. Horner stay during those times said defendant was gone?

Ans. She remained in the house and on the land where said M. B. Flemer left her.

Ques 4, Please state whether or not the said Milton B. Flemer during the time he was thus away, furnished or provided the plaintiff with any support or maintenance?

Ans. I do not know.

Ques 5, Please state whether or not you ever heard a conversation between the said plaintiff and defendant about him supporting and maintaining her, and if so what did the defendant tell her.

Ans I did hear a conversation between said plaintiff and defendant at the house she lived in, and before the deft. moved back to said house. I heard the plff. ask the deft. to lay her off her part of the land, and he told her he would lay her off nothing. He told her if she got sick she could lay there or go to the poor-house, that he was done with her.

X-Examined-

Ques 1. State what relation you are to the Deft. in this case - Milton B. Fleener?

Ans. We are brothers.

Ques 2. State whether or not you are not mad at the Deft. Milton B. Fleener, & if you have not recently had some litigation with him yourself?

Ans. I am not mad at him. He owed me some and would not pay it, and I warranted him, as I would do any other man.

owed me and would not pay it.

Ques. 3. Did you get a judgment vs. him for all you warranted him for?

Ans. I did not.

Ques. 4. State whether or not when the Deft. moved away from the plaintiff, if it was not only temporarily & did he not arrange for another family to move in the house with her & take care of her during his absence?

Ans. I ^{do} not know how long he moved away to stay - I know nothing of the arrangement he had made for another man to move into the house with her and take care of her. I heard the deft. say, and I think it was in the presence of the plff., that he had arranged for a family to move in with the plff. and take care of her during his absence.

Ques. 5. Was there not another family living in the house with the plaintiff while the Deft. was away? If so, who were they?

Ans. There was: Henry Patrick and family lived in the house with her.

Ques. 6. State whether or not you have heard Henry Patrick say that the Deft. owed him or he had an account against the Deft. for taking care of the Plaintiff while the Deft. was moved away & he (Patrick) was living in the house with her?

This question is objected, Because the question and any answer thereto is irrelevant and immaterial, and also for hearsay evidence.

Duncan Russell for ~~off~~

Ans. I never heard him so say that I now remember.

Ques. 7. After the Deft. moved away from the Plaintiff did he not frequently come back to look after her & see that she was properly taken care of during his absence?

Ans. He came back several times - I do not know what he came for.

Ques. 8. State how it was that you heard the conversation spoken of by you in answer to question 5 of your examination in chief?

Ans. I was passing by the house going after the cows, As I went up they were talking and as I came back they were still talking, and I went up to hear what they were talking about.

Ques. 9 Do you not know the fact that when the Deft. moved away from the Plaintiff that he left some wheat + other supplies there for her maintenance?

Ans. I do not.

Ques. 10. Are you not mad at the Deft, because on one occasion when you went to his appointment, ^{to preach} drinking with a canteen of liquor, he reproved you for coming there in that condition?

Ans. I am not.

And further this deponent saith not.

Monta^{his} X Fluor
mark

H. W. Patrick, a witness of lawful age, being first duly sworn, deposes and says:-

Ques. Please state whether or not the

defendant William B. Flemer, moved away from the house and lands mentioned in exhibit A, and left and abandoned the said plaintiff, and if so when he left, where did he go, and how long did he remain away?

Ans. W. B. Flemer did move away from the house and lands on the 28th day of Apr., 1893, and abandoned and left said plff. alone in said house. He moved to Pennington Gap, Lee County, Va., and remained away about 10 mos. He came back about the last of Jan., 1894.

Ques 2. Please whether or not said defendant supported and maintained the said plaintiff during ~~the~~ time he was thus away?

Ans. He did not.

Ques 3. Who did support and maintain said plaintiff during said defendant's absence, if any one?

Ans. I did.

Ques 4. Who, if any one, has paid you for it, or to whom do you look for payment, if you have not been paid.

Ans. I have not been paid by any one.

and I look to Hannah Harbor
for pay, as she agreed to pay
me.

Ques 5. What would be a reasonable and
fair compensation for the support and
maintenance ~~which you for~~
~~wished~~ the plaintiff per annum?

Ans. I suppose about \$60.

Ques 6. What would be a fair cash
rental value per annum for
the house and land mentioned
in exhibit "A"?

Ans. I think about \$100.

Ques 7. Please state whether or not you
ever heard a conversation between
the said plaintiff and defendant
about ~~the defendant~~ supporting
and maintaining her, and if so,
what did the defendant tell her?

Ans. About the middle of last De-
cember the plff. and deft. were
in a dispute at my house about
a machine. The plff. asked
the deft. for some corn to feed
her cow. He told her that he
would not give it to her. She
then told him to lay off her
part of the land, ^{and she would ask him for nothing else.} He told her

that he would lay off nothing for her - that he was done with her now and forever - that if she got sick she might lay there - if she went to the poor house, he did not care.

X Examined.

Ques. 1. Who lived in the house with the pl'ff while the Dept. was away at Punishment Gap?

Ans. I did.

Ques. 2. Did you rent the house & premises when you moved in the house with the pl'ff. If so, from whom?

Ans. I rented said house from M. B. Fleenor.

Ques. 3. State whether or not when you rented from the Dept. M. B. Fleenor if you & him did not have a contract for you to take care of the pl'ff until he moved back, or made other arrangements?

Ans. He did not.

Ques. 4. you stated the Dept. moved away & left the Dept. alone, how long was it after he moved out until you moved in the house with her?

Ans. I moved in the same day.

Ques 5. State whether or not when you rented ~~the~~
from the Dept. if he did not agree
to furnish the Plaintiff with some
supplies + did he not do so?

Ans. He agreed to furnish her with
supplies, and ~~he~~ furnished ~~but~~
~~pieces of~~ meat that he said

Ques 6. was $13\frac{3}{4}$ lbs.; 1 bu. of corn; 3 lbs.
of coffee; + 10 cts for butter. This
is all he furnished that I
know of.

Ques 6. How did the Dept. get possession of
the said house and land when he
moved back from Pennington
Gap?

Ans. He lawed me out of it.

Ques 7. Did you or not hear the Dept. Tell the
Plaintiff that he was going to move
back + take care of her as he had always
done, or words to that effect?

This question is objected to,
Because the defendant cannot
give in evidence self serving
declarations, I mean I will atty
for Plff,

Ans. He did come there ^{just before Jan. court} and tell her that
he was coming back after court
to take care of her.

+ C.B. Henson

Ques 8. Did you or not tell Patton Gooden
down there in the neighborhood where you
live since you lived in the house with
the pl'ff that the Deft. owed you for
taking care of the pl'ff while he (the Deft.)
lived at Pennington Gap?

Ans. I did not.

Ques 9. State whether or not you told C.B.
Henson, since the institution of this
suit, in the neighborhood where you live,
that if the pl'ff gained her land in
this suit she was going to deed it
to you?

Ans. I did not.

Ques 10. What are your feelings toward
the Deft. in this case?

Ans. I do not know that I have
any thing against him.
In examination,

Ques 1. In question no 7, on cross examination
you say that defendant came there
at the time then stated, and said to
plaintiff that he was coming back
after court to take care of her, now state
what the plaintiff told him in an
swear or this.

Ans. She told him that she did not
reckon he would.
And further this deponent saith not.

H.W. Patrick

Witness
claims
2 days
\$1.00

S. E. Turner, a witness of lawful age, being first duly sworn, deposes and says:

Quest. Please state whether or not you ever swapped horses with M^r. Flemer, and if so, where and when it was, and what the plaintiff Hannah J. Harber said to the said Flemer about the horses on that occasion, if anything.

Ans. I did swap horses with said Flemer about 3 years ago. This swap was made at his home on the Sugar Run road. Hannah J. Harber said to me that the horse Milt was swapping was hers and she did not want him to trade it. I do not know whether Milt heard this conversation or not. He came down from the barn with me, and was in the yard or in the house at the time she was talking to me, but I do not know whether he heard her or not.

The above question & answer in relation to what the pl^{ff}, Hannah J. Harber said to witness is objected to, because it being only self serving declarations - therefore not admissible. J. & B. for Def.

Ques. 2. What did Mrs. Fluor say in reply to what the plaintiff said about the horse being hers?

Ans. I do not remember what. It strikes me that he said something, but I do not remember what. I can't say positively that he was present.

X. Examination.

Ques. 1. Please state whether or not the plff, Hannah J. Harber, ~~for~~ objected to your taking the horse away you swapped for?

Ans. She did not.

Witness claimed
50 cts

And further this deponent saith not.

J. C. Turner

C. B. Fluor another witness of lawful age being duly sworn deposes and says.

1 question. Please state whether or not the defendant took into his possession and traded off a mare belonging to the complainant.

Ans. I suppose he did. I was not present at the trade. I was there a few days after the trade, and the deft. was showing me the horse and told me that he had traded the mare for him.

2 question. To whom did Defendant say the mare belonged to, if you ever heard him say?

Ans. At the time we were talking about the trade I don't remember that he said who the mare belonged to; but during the time the mare was there on the place the deft. called her Hammah's Mare.

3 question Did the Defendant tell you how he swapped the mare to the horse? if so how did he say said exchange was made?

Ans. My recollection is that he said he swapped even.

4 question. What was said mare reasonably worth at the time defendant traded her off

Ans. I think she was worth about \$60.

5 question. If you have heard the said Defendant say anything, about the complainant recovering this land from him. please state what he said about

Ans. I heard Milt say that the plff. might recover the land but that it would have to be sold for her lawyer fee, and that he would bid it in.

X Examined:

Ques. 1

In reply to question 1, of your examination in chief you say you

1
suppose deft. took possession of
Complainant's mare & traded her
off, do you know this to be a fact?

Ans. He had the mare in his possession,
but I cannot say whether he
had bought her or not. I do
not know who the mare belonged
to.

Ques. 2. How old was said mare?

Ans. I do not know.

Ques. 3. ^{What} Would you consider a mare, very
small, that was 20 or 21 yrs. old, rea-
sonably worth in cash at the time
said trade was made?

This question is objected to because
the witness has already shown himself
to be well acquainted with the mare in
controversy and no hypothesis is necessary.
A. T. Smith

Ans. Some mares are worth more than
others at that age. I considered
that mare worth \$60.

Re-examined

How long had you known said mare

Ans. About 20 years, or ever since
she was foaled.

And further this deponent saith not.

C. B. Filer -

J. H. Flemer, another witness of lawful age, being first duly sworn, deposes and says:

Ques 1.

Please state whether or not the defendant moved away from the house and land in controversy in this suit; and if so, left and abandoned the plaintiff, and if so, when, where did he go, and how long did he remain away?

Ans. My recollection is that he left about the last of Apr, 1893, and I suppose he went to Pennington Gap, Lee County, Va. He remained away until sometime in Jan, 1894.

Quest What would be a reasonable and fair compensation to support and maintain the plaintiff per annum?

Ans. I suppose from \$50 to \$75.

Quest What would be a fair cash rental value of the premises in controversy per annum?

Ans. I suppose from \$50 to \$60.

Quest Do you know anything about the defendant taking a mare from the plaintiff and trading her off for another horse, if so

all ~~all~~ you may I know about
the ownership of said mare and
the ~~one~~^{horses} he exchanged for

Ans. He rode a mare off that I have
always understood belonged to
Hannah N. Harber, and when
he came back he brought a
gray horse, or at least said
horse was there the next day.
The little bay mare was foalbed
Hannah's, and when I borrowed
said mare I always went to said
Hannah for her, and this contin-
ued up to the time said mare
was traded, I did not borrow
said mare any for the last two
or three years that I now re-
member, as I had no use for
her.

Ques⁵ Please state whether or not the
defendant ever borrowed any
money from the plaintiff
and if so, how much?

Ans. The Deft. and myself borrowed
from her either \$300 or \$350 -
the note will show. I have
said note, or another paper, at
home which will show ^{the exact amount}, and I
will file the same as part of my

deposition, marked "Q".

Ques 6. When did you & defendant
borrow this money, and state
whether or not defendant and
you have ever paid this
money back to the plaintiff?

Ans. I think it was about 1887. As to
my part, it is settled; but as
to his part, I do not know.

Ques 7. When was this money to become
due and payable?

Ans. I do not know that any time
was set.

Ques 8. How much of this money
was the defendant's part?

Ans. One half.

Ques 9. Do you know of the defendant
borrowing any more money
from the plaintiff or so. how
much?

Ans. I do not.

X. Examination.

Ques 1. Please state whether or not the Deft. did
not only move away from the
Pl'ff temporarily & did he not get
a family to move in the house
with the Pl'ff to take care of
her during his absence?

Ans. I do not know anything about that.

Ques. 2. State why the Deft. moved to
Pennington Gap?
ans. I can't do it.

Ques. 3. Do you know of a fact that
the Deft. taken a mare of the
pl'ff & traded her off for another
horse?

ans. I do not know of a fact, but
I do know she was foal'd
the plaintiff's mare, that she has
always claim her & understood she
hers in the neighborhood.

Ques. 4. Please state whether or not if you
know if the pl'ff traded or gave
the ^{said} mare to the Deft. before he traded
her off for the gray horse?

Ans. I do not.

Ques. 5. Where is the plaintiff now living
& where has she been living since
the Deft. moved back from
Pennington Gap?

Ans. She is now living at my house &
has been since Deft. came back.

Ques. 6. What relation are you to the Deft.
in this case?

ans. I am his father.

Ques. 7. State whether or not you are friendly
to the Deft. in this case, & if you haven't

recently had some litigation with the
Deft. yourself?

Ans.

I have got nothing against him and
would not wrong him in anything.
I have had some litigation with him.

Ques. 8.

Please state whether or not since the
institution of this suit you did not
tell Patton Good & E. C. Hlenor,
in the neighborhood where you live,
that you intended to have what
the pl'ff, Hannah J. Harber had, &
are you not the instigator of
this litigation?

Ans.

I did not, and I am not.

Ques. 9.

State whether or not if before &
after the institution of this suit,
in the neighborhood where you
live, you have not told the Deft.
Milton B. Hlenor, that you could
take the land he got of Hannah
J. Harber away from him
& that if he monkeyed or
fooled with you, you would
do it?

Ans.

I did not.

Ques. 10

Please state whether or not if
you know if the Deft. ever borrowed
any money of the pl'ff, if so, how
much & when was it & whether
or not he has, or has not paid it
back?

Ans. He and I borrowed of Hannah P. Harber a note on Newton Hygal; we turned said note over to J. M. Orr, in order to get him to endorse for us at Knoxville - we were in the mercantile business. She assigned said note to us. This note was for \$300 or \$350, I am not certain as to the amt. This transaction was ~~made~~ ^{made} ~~there~~ ^{made} from the years 1885 to 1887. I do not know any thing about his having paid said note back.

Ques. 11 Do you not know of a fact that the Dept. tried to borrow this money of the pl'ff & that she refused to loan it to him & that you borrowed the money of her your self?

Ans. I do not.

Ques. 12 In answer to Question 6 of your examination in chief you say that your part of this money debt is settled, is that a fact, if so, please state when & how you settled it?

Ans. I have a clear receipt from under her hand as to all claims and demands against me. I can't

state when I paid it - but every since I got the note I have been paying little sums, now and then. She owed me some before we borrowed the note. Some time ago we met and settled and she gave me a clear receipt against said note.

Ques. 13. Please state whether or not before you borrowed this note if you did not owe the pl^{ff} other borrowed money to wit: \$100.00 borrowed at one time + \$45.00 at another time, + is it not a fact that you have not half paid her back; but by stirring up strife between her + the Deft. in this case you have "gulled" or thus induced her to give you a receipt in full of all claims she held against you?

This question is objected to, because it is immaterial, the dealings between witnesses and plaintiff has nothing to do with questions in this suit.

Duncan T. Atty
for pl^{ff}

Ans. I had borrowed \$100. from her before this - I never heard till of the \$45. I do not know how

how much I have paid her -
I have paid her whenever
she called on me for it,
and I have a clear receipt.
I have not induced her to give
the receipt as stated in the
question.

Ques. 14. you say you know nothing of the
\$45.00, Did you not borrow \$40.00 or
\$45.00 of her to pay for some hogs you
bought of John Wynn?

Ans. I did not.

Ques. 15. Please state what interest you have
in this case, if none, why is it you
have been hunting up evidence for
the pliff & getting witnesses to come
here & testify for her? And also why
the pliff did not go with H. W. Pat-
rick when he moved from your
house?

That part of the foregoing question which
assumes that witness has been getting up wit-
nesses for the complainant is excepted, because
there is no evidence whatever that he has been
doing so.

Duncan & Swell Attys.

for Complainant,

Ans. I have no interest further
than desiring to justice done.
I have not been hunting up ev-
idence &c, as stated in the question.

The only thing that I have done was, that after the witnesses were ascertained, I advised them to attend without waiting to be summoned. I cannot answer why she did not go with Patrick.

Re-examined.

How near did you live to the complainant and defendant in this suit, while they lived on the premises now in dispute?

Ans. Six or eight hundred yard - never measured the distance - it is in sight.

2. What relation if any do you or your family bear to Hannah J. Horner, the complainant in this suit?

Ans. She is a first cousin to my wife.

3. On your examination in chief we forgot to ask you, the value of the mare of the complainant traded off by Deft. Will you now please state what was the fair cash value of the mare at the time she was traded off.

Ans. I suppose \$60.

X-Examined

Ques. 1. How old was the said mare at the time she was traded by the Deft. & what was her size?

Ans. A small mare, well compact, and close 20 years old. John H. Fleener

Witness claims
two days
\$1⁰⁰/₁₀₀

Hannah J. Harber, another witness of lawful age, being first duly sworn, deposes and says:—

1. Please state your age.

Ans. I will be 76 years old the 29 day of next July.

2. Who raised and took care of the Defendant.

Ans. My aunts and myself from the time he was two years of age. My aunts ~~that~~ I refer to were Sallie Thompson and Annie Thompson.

3. On examination of the deed signed by yourself Annie Thompson and Sarah Thompson, I see that it recites that in consideration that Milton B. Fluor has lived with and worked for you (the grantors) and will continue to live with and take care of you (the grantors) during their natural lives, that you give grant and convey the lands described in said deed. Now will you please state whether or not from the date of said deed the said Milton B. Fluor has continued to live with and take care of you up to this time?

Ans. He has not.

4. When, how, and in what manner, and in what condition did he leave and abandon you.

Ans. He first left me in the year 1879. He stayed away that fall and winter, the next summer and

until Feb. of the next year, when my aunt Sallie died, and he then moved back. He next left me the 28 day of Apr. 1893, and stayed away until about the last of Jan. 1894.

When he left me the last time, he left me nothing to go on only a piece of bacon

5 Do you know the reason why he left you and your aunts the first time if so please state it.

Ans. His wife could not get along with my aunts, and she would not stay any longer with them, and he went with her.

6 How old was your aunts at that time

Ans. One of them was in 70, and the other 67 or 68.

7 Who supported and took care of you and your aunts, while he was gone away from you this first time?

Ans. What the neighbors did not give us, we worked and got ourselves. The neighbors cut and hauled our wood and were very good to us.

8 Can you state the reasons why the

said Defendant left and abandoned you the last time?

Ans. He said he wanted to move to Pennington Gap so he would be nearer the center of his circuit - that he then lived in one edge of it.

9. Who took care of and supported and maintained you while he was gone from you this last time.

Ans. Henry Patrick

10 Did, the said Defendant, furnish you anything by way of support and maintenance while he was away from you, if so please state what he furnished you.

Ans. He left a small piece of meat of 7 or 8 lbs.; ^{Afterwards he furnished me} 4 lbs. of coffee; 10 cts in money to buy me a pound of butter with; a pound of sugar; and a bout a pound of rice.

11 How did you live, with Patrick. I mean did he support and care for you free of charge or did or do you have to pay him for it?

Ans. I have to pay him for it.

12. Tell us about the mare, you speak of in your bill, who she belonged to, whether the Defendant traded her off and if she was traded with your consent.

Ans. The mare belonged to me. &c

traded her off against my consent, for I had told him not to trade her.

13. After he traded the mare off, did he bring the horse home to where you were living, if so what did he say about it?

Ans. Before he got home he wrote a card to his wife that he had traded the mare off for a pacing gray horse. He came home after night, we lit a lamp and went up and looked at the horse. I liked the horse very well, I claimed him as my own and objected to his trading him off.

14. When did you first find out that the Defendant was claiming as his own the horse or any one of them for which you were traded?

Ans. I did not know that he was claiming any of them - if he did he never told me that he did.

15. Did he take the horse away with him when he left you and went to Punnett's Shop, or did he leave him with you?

Ans. He took the horse with him.

16. How much of the Tract of land here in dispute was and is your property?

Ans. One-third.

17th How you ever asked the Defendant to lay off for you your interest in said land if so please state when it was, what you said to him and what he said to you?

Ans. I have asked the deft. to lay off my interest in this land. This was sometime last winter. I told him if he would lay off my part of the land that he might go. He said that he would lay me off now; that he was done with me now and forever; that if I got sick I could lay there or go to the poor house which ever I pleased. This was about a month before he moved back to the place, and was before I employed counsel to bring this suit.

[A compromise is here agreed upon and the parties close further taking of these depositions]

J. A. M. Gomis, Special commissioner in the above styled cause.

do certify that the foregoing depositions were duly taken under oath after notice, and subscribed before me, and at the time and place, as above mentioned.

Given under my hand, this Apr.
24, 1894,

A. M. Gorins,
Special Commr.

"H"

L. P. Fleenor
claims 50 cts

L. P. Fleenor a witness who
was summoned by the plff,
but was not introduced, claims
attendance for one day.

A. M. Gorins,
Special Commr.

H. P. Harbor

vs. } Deposition.

M. B. Flemon.

"K"

Hannah T. Harber

vs.

Milton B. Fleenor

} In Chy.

To the Hon. H. T. Miller, Judge
of the Circuit Court for Lee Co., Va.

Your undersigned Special
Commissioner reports, that,
in pursuance of a decretal
order entered in the above styled
cause on the 16th day of March,
1894, he, on the 23rd day of
Apr., 1894, and on succeeding
days thereafter, at his office in
the town of Jonesville, pro-
ceeded to ascertain whether
the deft., since the execution of
the deed of conveyance to him
by the plff., has lived with, sup-
ported and maintained said
plff. on the said premises; whether
he abandoned and left her
and went away from said prem-
ises; how or by whom the plff.
was supported and maintained
during the time of such aban-
donment; how much money
he received or borrowed from
her, and whether the same was
used for her benefit or support;

how much he still owes her, if any; whether he has her horse, where he got it, and how he should account for the same, if at all; whether said land should be partitioned between said parties and the share of the plff. laid off and assigned to her; and to take and state an account of the rents and profits of said lands and the share of each therein. And your commissioner, having giving due notice to the parties interested, and having proceeded with the taking of testimony to the extent of the depositions herewith filed marked "K," when the parties agreed upon a compromise, the terms of which is set forth in the writing herewith filed marked "J," and said parties requesting your court. to proceed no further with said testimony, but to report said compromise to this court, he here followed the requests of

said parties, and ~~last~~ re-
fers to said writing "J" for the
terms of said compromise.
All of which is respectfully sub-
mitted. This Apr. 25, 1894,

A. M. Goins,
Special Comr.

Hannah T. Harber

vs. { Cour's Report.

Milton B. Fleunor.

Filed Apr. 26, 1894.

A. B. Munsey C.

Cour's fee \$10⁰⁰

1 This Deed made and entered into on this
2 the 15th day of April 1878 Between Anna
3 Thompson Sarah Thompson and Honnah T Horber
4 of the one part and Milton B Fleener of the
5 other part all of Lee County Virginia Witnesseth
6 that for and in consideration that the said
7 Milton B Fleener has lived with and worked
8 for the parties of the first part and will
9 Continue to live with and take care of them
10 during their Natural lives they the parties of
11 the first part do hereby give grant bargain
12 sell and Convey to the said Milton B Fleener
13 all their right title and interest in and
14 to a certain tract or parcel of Land lying
15 and being on the Sugar Run road about
16 One half a mile North West of the Camp Ground
17 in Lee County Virginia it being the same tract
18 or parcel of Land formerly owned by Henry Thompson
19 Sr Deed and Henry Thompson Jr Deed and the
20 rights titles and interests hereby Conveyed
21 being their interests as heirs of Henry Thompson
22 Sr Deed and as heirs of Henry Thompson Jr
23 Deed in the said tract of Land; but the parties
24 of the first part hereby reserve the right to
25 the possession and control of their interests
26 hereby conveyed During their Natural
27 lives and they also hold the said Land
28 hereby conveyed bound for their support
29 art and maintenance. So long as they
30 may live and they hereby reserve and
31 obtain a lien on said Land for this
32 purpose. Witness the following Signa

1. Witnesses & seals.

2. Witnesses

3. David Miller

4. Alles P. Wynn

5. John H. Fleener

^{her}
Anna ~~x~~ Thompson

^{her}
Sara ~~x~~ Thompson

^{her}
Hannah ~~x~~ Forbes

Seal

Seal

Seal

7. Virginia Lee County Court clerk office April
8. 16th 1878. The foregoing Deed from Anna
9. Thompson Sarah Thompson + Hannah T Forbes
10. of the one part to Milton B Fleener of the
11. other part all of Lee County Virginia
12. was this day proved by the oaths of
13. David Miller + John H Fleener who made
14. oath that the said Deed was acknow-
15. ledged before them by the said parties of
16. the first part to be their act and Deed
17. for the purposes therein mentioned
18. and is therefore admitted to record
19. Teste James W Orr clerk

21. A Copy Teste J. V. H. Richmond clerk

Anna Thompson et al
vs
Copy of Deed

M. B. Fleener

R. D. Book 18. Page 458

J. H. R.

Page # 10

"A"

The Commonwealth of Virginia,

To the Sheriff of the County of Lee, Greeting:

WE COMMAND YOU, That you summon

M B Fleenor

to appear at the Clerk's Office of the Circuit Court of the County of Lee, at the rules to be held for the said Court on the *First* Monday in *February*, 189*4*, to answer a bill in Chancery, exhibited against *him* in our said court by *Hannah T. Harber*

And have then there this writ. Witness, A. B. MUNSEY, Clerk of our said Court, at the court-house, the *11th* day of *January* 189*4*, and in the *11^{8th}* year of the Commonwealth.

A B Munsey Clerk.

ex Jan Th 13. 84

Hannah T. Harber

vs. { **SUBPÆNA
IN CHANCERY.**

M. B. Fleenor

B. H. Sewell p. q.

To 1st February Rules 1894

Circuit Court.

Executed Jan Th 13. 1894
by delivering and affixing
copy of the within
summons to M. B. Fleenor

C. E. Flannery,
S. Lib

The Commonwealth of Virginia,

To the Sheriff of the County of Lee, Greeting:

WE COMMAND YOU TO SUMMON

H. G. Fleenor and L. P. Fleenor

to appear before the *Cour. A. M. Goins* Judge of our Circuit Court of Lee County, at *his office in Jonesville Va* the ~~court house~~ thereof on the *24th* day of *April* 189*4*, to testify and the truth to say in behalf of the *Plffs*

in a certain matter of controversy in our said Court, before the said Judge depending and undetermined between

Hannah T Harber

Plaintiff

and

M. B. Fleenor

Defendant :

And have then there this writ.

Witness, A. B. MUNSEY, Clerk of our said Court, at the court-house,

the *23rd* day of *April* 189*4*, and in the *11 8th* year of the Commonwealth.

A. B. Munsey

Clerk.

Hannah T. Harber

VS }

SUBPENA
FOR
WITNESS.

M. B. Fleenor

Circuit Court, the 24th day of

April 1894.

Executed April 24, 1894

by, summoning the within
witnesses

C. E. Flannery.

J. T. C.